IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.11.2007
CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR

W.P.No.14607 of 2006

S.S.Neelakantan ... Petitioner

vs

1. The Secretary to Government,
Animal Husbandry and Fisheries Department,
Fort St. George, Madras-9.

2. The Director of Animal Husbandry,
Central Office Building,
Madras-6.

3. The Regional Joint Director of Animal Husbandry,
Madurai Region,
Chokkikulam, Madurai-2. ... Respondents

This petition came to be numbered by transfer of O.A.No.404 of 1994 on the file of the Tamil Nadu Administrative Tribunal praying for the issuance of a Writ of Ceriorarified Mandamus, to call for the records relating to the proceedings of the Government Letter No.26764/AH1/92-15, dated 22.12.1993, Animal Husbandry and Fisheries Department, Madras, quash the same and consequently, direct the respondents herein to confer Special Grade in the cadre of Live Stock Inspector Gr.I with effect from 06.10.1986 A.N., with arrears of pay with effect from 01.04.1987 as per G.O.Ms.No.281, Finance (Pay Cell) Department, dated 02.04.1987 and pay all the arrears of monetary benefits for the period from 06.10.1986 to 01.01.1989 in view of such advancement within a specific date and also direct payment of interest at the rate of 18% p.a., on the arrears of monetary benefits on account of advancement to special grade from 06.10.1986 to 01.01.1989.

For Petitioner ... Mr.K.Rajkumar

For Respondent ... Mrs.Lita Srinivasan,
Government Advocate
ORDER
The petitioner has challenged the Government Letter dated 22.12.1993, wherein, the request of the petitioner for pay scale and advancement to Special Grade was rejected and sought a direction to the respondents to confer Special Grade in the Cadre of Livestock Inspector Grade I, with effect from 01.04.1987 as per G.O.Ms.No.281, Finance (Pay Cell) Department, dated 02.04.1987 and pay all the arrears of monetary benefits for the period from 06.10.1986 to 01.01.1989, with interest at the rate of 18% per annum.

2. Brief facts leading to the Writ Petition are as follows: The petitioner was appointed as Livestock Inpsector Grade II on 09.08.1958 and promoted as Livestock Inspector Grade I on 06.10.1966. On completion of 10 years as Livestock Inspector Grade I, the petitioner was advanced to Selection Grade with effect from 01.10.1978 and accordingly, his pay was fixed. The petitioner completed 20

years of service as Livestock Inspector Grade I on 06.10.1986 and therefore, he should have been advanced to Special Grade on 06.10.1986.

3. According to the petitioner, the Government in G.O.Ms.No.281, Finance (Pay Cell) Department, dated 02.04.1987, directed that an employee, who has not completed 10 years of service in the selection grade, is entitled to be advanced to Special Grade, provided he has completed 20 years of total service in the same post. The petitioner has completed 20 years of service as livestock Inspector Grade I on 06.10.1986 and therefore, he should have been advanced to Special Grade on completion of 20 years of service. The petitioner has further submitted that though he was conferred with Special Grade by the proceedings of the Regional Joint Director of Animal Husbandry, Madurai in Roc.No.22421/B2/90, dated 10.01.1991, due to punishment of stoppage of increment without cumulative effect which was imposed on 01.10.1987 and considering the fact that the punishment came to an end only on 31.03.1988 and as per Government Letter No.57502/90-1, P & AR (Per.S) Department, dated 21.10.1990, he was advanced to Special Grade only with effect from 01.01.1989.
4. According to the petitioner, the denial of Special Grade pay from 06.10.1986 A.N, to 01.01.1989 is totally arbitrary and therefore, he made representation dated 18.03.1991 to the Director of Animal Husbandry to award the Special Grade Pay. The said representation was forwarded to the Government for clarification. By letter dated 05.06.1992, the Government rejected the appeal and communicated the same by letter dated 01.07.1992. Against which, the petitioner filed a revision petition to review the order rejecting his claim. The Government rejected his claim and communicated the same by letter No.26764/AH1/92-15, Animal Husbandry Department, dated 22.12.1993, which is impugned in this Writ Petition.

5. Assailing the impugned order, the petitioner has contended that he was working as an Extension Officer, Animal Husbandry viz., in Madurai West Panchayat Union between 22.07.1982 to 19.02.1983. Thereafter, he was transferred to Tiruvedagam Sub-Centre and by order dated 26.10.1983, where he was placed under suspension on the ground that enquiry into grave charges was under contemplation. Charges were framed on 20.12.1983 against the petitioner in respect of certain alleged irregularities in discharge of his duties as Extension Officer, Animal Husbandry, Madurai, West Panchayat Union. Thereafter, the suspension was revoked. Finally, the Regional Director of Animal Husbandry, Maduai, vide in Na.Ka.No.6282-A1/87, dated 03.08.1987, imposed penalty of stoppage of increment for a period of six months without cumulative effect. The period of suspension between 27.10.1983 and 16.03.1984 was regularised as Earned Leave by the order of the Joint Director of Animal Husbandry, Madurai vide Na.Ka.No.10851/Ps/90, dated 18.05.1990. According to the petitioner, even though he suffered minor penalty of stoppage of increment, long after the crucial date for consideration for advancement to Special Grade, his claim has been erroneously rejected by the Government.

6. Placing reliance on the letter No.90842/A.H.L/80-4, Agriculture Department, dated 31.12.1980, Mr.K.Rajkumar, learned counsel for the petitioner submitted that the moment a Government Servant completes 10/20 years of service, including suspension period, he is entitled to advancement of Selection Grade/Special Grade automatically, whether he is qualified to higher post or not. He further submitted that since the Government in the above said letter, had deleted the expression "Satisfactory service", even if there was any disciplinary proceedings pending between 01.06.1976 and 01.06.1986 on the completion of 10 years period, the petitioner is entitled to the advancement of Selection Grade from 01.06.1986.

7. Relying on the Government letter No.118177/Per-S/86-1, dated 15.05.1987, learned counsel for the petitioner further submitted that even in the case of the Government servant, who suffered minor penalty, viz., "Censure", the appointing authority ought to have awarded Selection Grade/Special Grade with effect from the date of completion of 10/20 years of service. He further

submitted that the Government in their letter dated 16.02.1987, have issued clarification to G.O.Ms.No.68, P & AR, (Per-M), dated 23.01.1986 and ordered that the pendency of the charge is not a bar for advancement to selection/special grade. He further submitted that since conferment of the Special grade is the only relief available to an employee, who remains without any promotional avenues, there is no question of drawing a panel to Special/Selection grade and therefore, the petitioner ought to have been conferred Special/Selection grade, after completion of prescribed period, under the Rules. Lastly, learned counsel for the petitioner submitted that as the penalty of the stoppage of increment without cumulative effect for a period of six months was imposed on the petitioner only on 03.08.1987 and which was given effect from 01.10.1987 to 31.03.1988, the same ought not to have been taken into account for advancement of Selection/Special Grade and the action of the respondent in denying Special Grade amounts to imposition of two punishments for the same misconduct.

8. Per contra, Mrs.Lita Srinivasan, learned Government Advocate, placing strong reliance on G.O.Ms.No.68 P & AR, (Per-M), dated 23.01.1986, submitted that for advancement to Selection/Special Grade on completion of 10/20 years, the Government servant should put in "satisfactory service", in the ordinary grade and selection grade respectively and since the petitioner was facing disciplinary proceedings from the year 1983, which culminated into punishment of stoppage of increment for six months from 01.10.1987, the petitioner was moved to the Selection Grade w.e.f. from 1st January of the following year, after completion of the above said period. Apart from placing reliance on the above said Government letter, learned Government Advocate also relied on Paragraph 2(iv) of the Government letter No.118177/Per-S/86-4, dated 15.05.1987. She further submitted that advancement to the Selection grade has been done, following the instructions issued by the Government from time to time and postponement of Special Grade/Selection Grade does not amount to double jeopardy violating Articles 14 and 16 of the Constitution of India.
9. Heard Mr.K.Rajkumar, learned counsel for the petitioner and Mrs.Lita Srinivasan, learned Government Advocate for the respondents.

10. In Lalit Mohan Deb v. Union of India reported in 1973 (3) SCC 862, the Supreme Court has given the meaning of "Selection Grade", and the same is extracted hereunder:
"A promotion post a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should atleast be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency."
In the above judgment, the Supreme Court has extracted the relevant passage of the Central Pay Commission recognising the advancement of Selection Grade as found in Paragraph 10 of the Chapter X of the report, is as follows:
"The Commission observed "with the object of providing incentive to employees who have no outlets or very limited outlets for promotion to higher posts, we are recommending in a number of cases that a certain percentage of the posts in the grade usually 10 per cent. - should carry a somewhat higher scale of pay even though there will be no change in the duties. Following the terminology in vogue we have described these posts as selection grade posts". It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency."

11. Admittedly, there are no statutory rules relating to the advancement of the Selection Grade/Special Grade. The Supreme Court in the above judgment, at Paragraph 9, further held that,

"But the absence of such rules is no bar to the Administration giving instructions regarding promotion to the higher grade as long as such instructions are not inconsistent with any rule on the subject. The point was considered by this Court in Sant Ram Sharma v. State of Rajasthan reported in AIR 1967 SC 1910 and it was declared that in the absence of statutory rules regulating promotion to selection grade posts the Government is competent to issue administrative instructions as long as those instructions are not inconsistent with the rules already framed."

12. In the instant case, no statutory rules have been brought to the notice of this Court relating to advancement of Selection Grade/Special Grade. Therefore, what has to be considered is how the executive instructions issued by the Government regulate the advancement of Selection Grade/Special Grade from time to time. For this purpose, it would be relevant to extract the instructions issued from time to time.

13. Clarifications were issued in Government letter No.90842/A.H.L/80-4, Agriculture Department, dated 31.12.1980 as to whether Selection Grade can be given to those officers (i) who have put in more than 10 years of service, in the case of officers who were under suspension, excluding the suspension period and (ii) against whom disciplinary cases were pending finalisation. The Government examined the above points with reference to the G.Os., which were in existence as on 1980 and the competent authority issued orders as follows:

"As per the orders issued in G.O.Ms.No.214, Personnel and Administrative Reforms (Per.M) dted 01.03.1979 as amended in G.O.Ms.No.458, Personnel and Administrative Reforms (Per.M) dated 15.04.1980, all employees of Government shall be put in special/selection Grade posts automatically at the end of completion of 10 years of service whether they are qualified for promotion to a higher post or not the expression 'Satisfactory service' has also been deleted.
3. In the above circumstances, I am directed to clarify as follows:
i) In the case of officers who suspension period has not been regularised.
If the period of 10 years of service is satisfied including the suspension period, then selection grade may be given.
ii) In the case of officers against whom disciplinary action is pending.
Section grade may be given if the period of 10 years of service is satisfied, irrespective of the fact that charges are pending."

14. Subsequently, the Government based on the Fourth Tamil Nadu Pay Commission, in G.O.Ms.No.68 P & AR (Per.M), dated 23.01.1986, issued the revised guidelines for advancement to Selection Grade/Special Grade, that on completion of 10/20 years of satisfactory service, in the ordinary Grade and Selection Grade respectively, wherever, it has been provided, the Government servant is eligible for advancement to Special Grade. The extract of the prelude as provided in G.O.Ms.No.68 P & AR (Per.M), dated 23.01.1986 would be relevant for the purpose of deciding this case.
"The Government in their order first read above, have ordered that the principle of selection should invariably be followed in making advancement to selection grade posts. In the government Order second read above, the Government have accepted the recommendation of the Third Pay Commission and provided avenues of advancement on completion of ten years' service to selection grades and twenty years for special grades, for large number of categories in order to relieve stagnation amount Government Servants. They have also ordered that movement to the Selection Grade and Special Grades will be o completion of 10 yars of "Satisfactory Service" in the ordinary grade and Selection Grade respectively. Accordingly, guidelines were issued in regard to making advancement to Selection Grade/Special Grade posts under Heads of Departments/Secretariat in the order third and fourth read above. Consequent on certain representation, the government decided that advancement to Selection Grade/Grade posts be made on completion of 10/20 years of service.

2. The Tamil Nadu Fourth Pay commission while recommending retention of the scheme for provision of Selection/Special Grades has emphasized that the criterion of "Satisfactory Service" originally recommended by the Third Pay Commission for movement to Selection/Special Grades should not be given a go-by in the interests of standards of efficiency in administration and that the same criterion as for promotion should form the basis hereafter for granting Selection Grade/Special Grade on completion of 10/20 years of service.

3. The Government, after careful consideration, have decided to accept the above recommendation of the Tamil nadu Fourth Pay Commission. They accordingly direct that the guidelines already issued in the Government Orders 3 to 11 read above be superseded and the following fresh guidelines be followed hereafter, while moving the Government employees to Selection/Special Grades:

(i) For advancement to Selection Grade/Special Grades, all employees, who have put in 10/20 years of satisfactory service and who satisfy all the qualifications prescribed under the Special Rules/Adhoc Rules prescribed for promotion to the higher post shall be eligible:

(ii) All other normal criteria for promotion to a higher post, viz., seniority, good or satisfactory record of service, the nature of punishments imposed on the employee and the lapses for which the punishments were imposed, the pendency of charges or disciplinary proceedings or enquiry, by Director of Vigilance and Anti-Corruption, qualifications/tests prescribed under the Special/Adhoc Rules for the higher post, etc., should be followed while moving the employees to the Selection/Special Grade.

(iii)(a) For the purpose of advancement to Selection/Special Grades, a panel of all eligible employees, who will be completing 10 years/twenty years of service between 1st January to 31st December in a year, shall be prepared before the 15th December of the preceding year and got approved by the appointing authority, in accordance with the guidelines in sub-paragraphs (i) and (ii) above. The actual orders of appointment to Selection/Special Grade of the employees concerned shall be issued immediately after the date on which the individual complete 10/20 years of service.

(b) If an employee, who, at the time of preparation of panel does not possess the qualification required but subsequently acquires the qualification before the actual date of completion of 10/20 years of service, the appointing authority shall have the power to include his name in the panel and move him to the Selection/Special Grade.

(c) Punishment suffered in between the period approval of panel and advancement to Selection/Special Grade may be taken due note of by the appointing authorities before actual issue of orders, moving the persons to the Selection/Special Grades.

(iv) A copy of the approved panel of names for advancement to Selection/Special Grades shall be communicated to the employees whose names were considered (including those whose names have not been included in the panel within a month from the date of the approval of the panel. The person whose name has not been included shall be entitled to prefer an appeal to the next higher authority, within two months from the date of receipt of the communication of the panel;

(v) The cases of persons whose names have not been included in the panel, shall be reviewed, while preparing subsequent panels;

(vi) Service rendered in a lower post on other duty should not be taken into account as qualifying service in the higher post for advancement to the Selection/Special Grade. The service rendered in an equivalent or higher post on other duty should be taken into account for advancement to Selection/Special Grades, to the extent he should have acted in his original post in the parent department but for his deputation;

(vii) In respect of posts for which the Government are not the appointing authority, the required number of Selection/Special Grade posts can be created and filled up by the appointing authorities themselves keeping in abeyance an equal number of Ordinary Selection Grade posts. They should, however, send details of posts so created to the Heads of Departments/Secretariat immediately after the posts are so created. In respect of posts for which the Government are the appointing authority, the Heads of Department concerned can create the required number of Selection Grade posts and sanction advancement of employees to them. Heads of the Departments should similarly send the

details of posts so created to Government in the administrative departments;
(viii) A senior person in the Ordinary/Selection category will also be appointed to the Selection/Special category with effect from the date on which his junior is appointed to the Selection/Special Category even though the senior might not have actually put in the required 10/20 years of service. However, in respect of cases, where junior moves to Selection Grade due to retrospective regularisation from a date earlier than the date of regularisation of their seniors, the seniors should be appointed to Selection/Special Grades only after they have completed 10 years of service.
(ix) In respect of the case referred to in item (viii)above, the clarifications and guidelines issued in G.O.Ms.No.898, Personnel and Administrative Reforms Department, dated 23rd September 1983, as modified in Government Letter No.13841/84-6, Personnel and Administrative Reforms Department, dated 2nd November 1984 shall be scrupulously followed.
(x) The period of ten years in a post will be reckoned from the date of regular appointment but will exclude periods of reversion. Leave other than extraordinary leave without allowances without medical certificate should be taken into account while completing the 10/20 years period.
(xi)These instructions/guidelines will not apply to categories for which there are promotion posts.
4. The guidelines now issued will take effect from 10th June 1985 (i.e., date of the Government Order twelfth read above). Orders already issued, if any, in respect of cases which have arisen for movement to Selection/Special Grades on or after 10th June 1985 should be reviewed in the light of the fresh guidelines now issued.
5. The Scheme of advancement to higher post under Flexible Complementing Scheme shall continue without any change and cases which have arisen after 1st October 1984 shall continue to be processed with reference to the guidelines already issued in G.O.Ms.No.487, Personnel and Administrative Reforms (Per.M), Department, dated 18th March 1979 and subsequent instructions thereon."

15. Subsequently, in continuation of the guidlines the Government in their letter No.118177/Per-S/86-4, dated 15.05.1987, issued further instructions in Paragraph 3(iii) (b) and (c), which are as follows:
"i) A Government Servant whose name has not been included in a previous panel on account of his not possessing the requisite qualifications at the time of preparation of panel but included subsequently on acquiring the said qualification can be moved to selection Grade with effect from the date on which such persons acquire the qualifications.
ii) An employee, whose name has not been included in the panel even after completing 10 years of service because of pendency of charges and subsequently fully exonerated of all charges can be moved to selection Grade from the date on which he completes 10 years of service.
iii) In the case of Government Servants who have suffered minor punishments such as censure etc., after detailed examination enquire, the appointing authority may have the power of advancing them to selection Grade with effect from the date on which such persons complete 10 years of service.
iv) In the case of persons who have not been include in the previous list because of punishments such as stoppage of increments, whether it is with cumulative or without cumulative effect, reduction to a lower stage or to a lower rank but subsequently included after the expiry of the said period may be moved to selection grade only with effect from the crucial date of the panel, i.e., 15th December of that year, in which such persons have been included."

16. Perusal of the above Government Order and the Clarificatory Orders issued from time to time by the Governmentmakes it clear that the principle of Selection should invariably be followed in making an advancement of the selection grade posts. The executive instructions issued by the Government on the basis of the Tamil Nadu Fourth Pay Commission categorically emphasize the criterion of "satisfactory service" for advancement to selection grade/special grade and in order to maintain the

standard of efficiency in administration, the criterion which is adopted and followed for promotion should also be followed meticulously for granting selection grade/special grade on completion of 10/20 years of service. The criteria which are normally fixed for promotion to a higher post, are seniority, good or satisfactory record of service, the nature of punishments imposed on the employee, lapses for which the punishments were imposed, pendency of charges or disciplinary proceedings or enquiry by the Director of Vigilance and Anti-Corruption, qualifications/tests prescribed under the Special/Adhoc Rules to higher post etc. It is also evident from the above Government Order that if the government servant suffered a punishment between the period of approval of panel and advancement to Selection/Special Grade, the same may be taken due note of by the appointing authorities before actual issue of orders moving the Government servant to the Selection/Special Grades.

17. Reading of the executive instructions undoubtedly prescribe definite benchmarks for advancement to the Selection Grade/special Grade and it is intended to be awarded based on the assessment of the officers within the parameters set out in Clause 3(b) of the above Government Order dated 23.01.1986. In the light of the above factors/parameters and considering the emphasis on the criterion, "satisfactory service", which is insisted in the interest of maintaining standards of efficiency in administration, it could be inferred that there is a comparative assessment of the officers and there is definitely an element of selection in the advancement to selection grade/special grade and therefore, the advancement to such higher pay levelled in the same post is not automatic. Mere length of service in the post does not clothe the government servant any right for advancement to the higher levels of pay, de hors the criteria "satisfactory service".

18. Coming to the case on hand, the petitioner was placed under suspension on 26.10.1983 and the charges levelled on 20.12.1983, culminated into a penalty of stoppage of increment without cumulative effect, on 03.08.1987 and the effect of such penalty was between the period 01.10.1987 and 31.03.1988. Therefore, G.O.Ms.No.68 P & AR (Per.M), dated 23.01.1986, which came into effect from 10.06.1985, i.e., the date on which, the Fourth Pay Commission came into effect was to be applied to the case of the petitioner and while applying the above said guidelines to the facts of this case, the petitioner had certainly failed to satisfy the criterion "Satisfactory Service" and other norms laid down in the government Order for advancement to Selection Grade/Special Grade.

19. Therefore, the contention of the petitioner that as per G.O.Ms.No.281, Finance (Pay Cell) Department, dated 02.04.1987, the moment, the Government servant completes 20 years of service in a post, where there are only limited outlets, should be automatically awarded Special Grade, irrespective of the fact, whether he had put in 10 years of service in the selection grade, is not tenable.

20. As per the clarification letter dated 21.10.1990, the Government had directed that the crucial date for advancement to Selection Grade/Special Grade, in case of persons who have suffered punishment of stoppage of increment, was 15th December of that year and in respect of those persons, whose cases were overlooked in the previous panel due to the pendency of punishment, shall be moved to Selection Grade/Special Grade only w.e.f. 1st january of the year, following the year, in which, the punishment was completed.

21. Law is well settled that when the relevant considerations have been taken note of for the purpose of advancement to selection grade/special grade, the same cannot be claimed as a matter of right and judicial review is permissible only to find out whether the process and method followed by the respondents in arriving at the decision have been properly observed or not. It is also settled that judicial review of an administrative action, is permissible only to find out, as to whether there is any irregularity or illegality in the decision making process and not in the decision itself.

22. In the case on hand, I do not find that the respondents have deviated from the executive instructions, while considering the case of the petitioner for advancement of Selection Grade/Special Grade and therefore, the decision does not suffer from any illegality or material irregularity.

S. MANIKUMAR, J.

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23. In the result, the Writ Petition is dismissed. No costs.

14.11.2007
Index: Yes
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